THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.20464 of 2004

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for respondents 1 and 2 and the learned counsel appearing for the respondents 3 to 5.

It is the case of the writ petitioner that he is absolute owner and possessor of the property bearing No.11-5-22/1 situated at Red Hills, Nampally, Hyderabad. The respondents 3 to 5 are the owners of the property located on western side of the house of the writ petitioner. They dismantled the existing building to construct a new building, as such they approached the respondents 1 and 2 seeking permission for construction of ground + one floor + one room on second floor. The sanction was accorded by the respondents 1 and 2. Though no permission was granted for cellar portion, they constructed cellar illegally by using heavy machinery and when the writ petitioner threatened to take legal action, the respondents 3 to 5 filed O.S.No.3464 of 2004 on the file of V Senior Civil Judge, City Civil Court, Hyderabad. The writ petitioner filed I.A.No.1840 of 2004 for impleading him as a party to the said suit, but the said application was dismissed. In those circumstances, he filed the present writ petition.

Respondent No.2 filed counter affidavit stating that the respondents 3 to 5 obtained permission for construction of ground, first and second floors in premises bearing No.11-5-22/1 vide permit No.72/13 dated 13.07.2004, but they started construction deviating from the sanctioned plan. They have not maintained the space as indicated in the sanctioned plan. When the respondents 3 to 5 were directed to stop further construction, they filed O.S.No.3464 of 2004 and obtained orders of status quo vide orders in I.A.No.1634 of 2004. Under the disguise of the orders of status quo, they completed the construction. The allegation that the respondents 3 to 5 constructed cellar was denied by the 2nd respondent.

The petitioner filed C.R.P.No.5760 of 2004, and the same was allowed on 05.04.2005. Ultimately, they stated that there is a deviation on rear side in an extent of 5 feet and one side in an extent of one feet and the injunction petition filed by the unofficial respondents was dismissed and they will take further appropriate action in accordance with law against the said deviation.

Respondents 3 to 5 filed counter affidavit stating that the petitioner, who is a neighbour to their property, was forcing them for a period of more than one year to sell property. The old building was demolished and the permission was granted for construction of ground plus two upper floors. An advocate commissioner was appointed in O.S.No.3464 of 2004 and the report filed by him does not indicate the damage of the property of the petitioner. The petitioner himself has not constructed the building under a sanctioned plan, he encroached the municipal road and the municipal drainage was closed under his building.

A reply affidavit was filed by the petitioner stating that the respondents 3 to 5 completed the construction of the building by violating orders of status quo in I.A.No.1634 of 2004 in O.S.No.3464 of 2004. He further stated that while dismissing I.A.No.1634 of 2004 on 29.11.2004 against respondents 1 and 2, they were directed to take action against respondents 3 to 5. Inspite of the same, respondents 1 and 2 did not take any action against the respondents 3 to 5. He asserted that the cellar was constructed by respondents 3 to 5. With regard to the construction made by him, he stated that his building was 60 years old and hence, the allegation that he constructed building deviating the sanctioned plan by not maintaining mandatory setbacks is not correct. He also denied the allegation that he encroached the municipal road and the drainage water is flowing under his building.

Now the learned counsel for the respondents 3 to 5 states that the suit in O.S. No.3464 of 2004 was decreed. But no copy of the decree was filed.

In the circumstances, the writ petition is disposed of, directing the

respondents 1 and 2 to take note of the decree in O.S.No.3464 of 2004 filed by the respondents 3 to 5 along with the sanctioned plan and take appropriate action in accordance with law, after giving notice to the petitioner, within a period of (3) months from the date of receipt of a copy of this order.

No costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 04.03.2014
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